**THE HONOURABLE SRI JUSTICE**

**B.SESHASAYANA REDDY**

**WRIT PETITION NO.11101 OF 2005**

**Disposed of on 29-8-2005.**

**Between:**

**The President, Mandal Parishad,**

**Nellore Rural Mandal,**

**Nellore District. .. petitioner**

**And**

**The District Collector, Nellore .. respondents**

**And others**

**THE HONOURABLE SRI JUSTICE**

**B.SESHASAYANA REDDY**

**WRIT PETITION NO.11101 OF 2005**

O R D E R :

1. This Writ Petition has been filed by the President, Mandal Parishad, Nellore Rural Mandal, Nellore District with a prayer to declare the resolutions dated 30-4-2005 passed by the Mandal Parishad, Nellore (Rural) Mandal, Nellore District presided over by Vice President of the Mandal Parishad-2nd respondent as illegal, arbitrary and unjust and also contrary to Sec.165(3), 165(4) and 165(5) of A.P. Panchayat Raj Act, 1994.

2. B.V.Ramana Reddy is duly elected President of mandal Parishad, Nellore (Rural) Mandal. A General Body meeting of the Mandal Parishad, Nellore, was convened on 30.4.2005. He presided over the said meeting which was commenced at 2 P.M. The agenda for the meeting comprised 16 items. The meeting lasted till 5 P.M. According to him, pandemonium prevailed in the meeting and atmosphere became not conducive for passing any resolution and therefore he closed the meeting by 5 P.M. on that day. Thereafter, the 2nd respondent continued the proceedings and certain resolutions came to be passed. One of such resolutions is allotment of Rs.2.00 lakhs to each of MPTC members. It is the contention of the petitioner that 2nd respondent has no authority or power to preside over the General Body Meeting and pass various resolutions in his absence.

3. 3rd respondent filed counter. It is stated in the counter affidavit that the General Body Meeting of Mandal Parishad, Nellore had been commenced on 30.4.2005 at 2 P.M. with agenda containing 16 items. When item No.14(4) of the agenda came up for discussion i.e. with regard to sanction of Rs.2.00 lakhs to Vaviletipadu of Gundlapalem Territorial Constituency, the members expressed their dissent and demanded voting for approval and suggested the house to sanction works to each territorial constituency at the rate of Rs.2.00 lakhs to take up the developmental works. It is further stated in the counter that majority members present in the meeting authorized the Vice President to preside over and continue the business of the meeting. I deem it appropriate to refer para 3 of the counter and it is thus:

" It is submitted that the provisions of 165 of P.R.Act will not attract the contents of the Para No.3 as the meeting was held duly presided over by the President, Mandal Parishad, Nellore on 30-4-2005. As per the instructions laid down in the said G.O. as narrated in para No.2, the President has no powers to postpone the meeting without obtaining written request from the members of the meeting concerned. The question of powers and functions of the President and Vice President is not the main criteria in this case. Since the majority members expressed their consensus to continue the meeting and the President, Mandal Parishad, Nellore has not continued the meeting and left the meeting hall without any record in the Minutes book and as per the said G.O.Ms.No.218 of P.R & R.D Department vide… Para No.9 read as "Whenever the President/ Chairman, finds it necessary to temporarily leave the chair he may call on the vice President/Vice Chairman or in the later absence some other member to preside" But in this issue, the President has not called the Vice President and left the meeting, the majority members present in the meeting empowered the Vice President to preside over and continue the business of the meeting. Hence, since the majority members of the meeting decided to continue the meeting with the Vice President, this respondent also attended and participated in the business of the meeting that held in the later hour on 30-4-2005."

It is also stated in the counter that the President (writ petitioner) called for minutes book on 2.4.2005 and recorded closure of the meeting by affixing his signature with ante date i.e. 30-4-2005.

4. Heard learned counsel appearing for the petitioner and learned counsel appearing for 3rd respondent.

5. Learned counsel appearing for the petitioner submits that the petitioner as President of Mandal Parishad, Nellore (Rural) conducted General Body Meeting of the Parishad on 30-4-2005 and as the conduct of the members was not conducive for further discussion on the agenda items he closed the meeting at 5 P.M. duly endorsing the same in the minutes book and therefore reassembling of members under the Chairmanship of Vice President to continue the proceedings is contrary to the provisions of A.P.Panchayat Raj Act. In elaborating his arguments reference has been made to Secs.165 and 167 of the A.P.Panchayat Raj Act.

6. Learned counsel appearing for 3rd respondent submits that the petitioner having commenced the proceedings is expected to continue the same till the completion of all the agenda items and as he left the meeting abruptly, the members authorized the Vice President-3rd respondent to preside over the meeting and continue the proceedings and therefore resolutions passed by the General Body Meeting under Chairmanship of 3rd respondent, after the petitioner left the meeting, are in accordance with the provisions of the A.P.Panchayat Raj Act and rules for the conduct of business at a meeting of Mandal Parishad, Zilla Parishad or a standing committee of the Zilla Parishad vide G.O.Ms.No.218 dated 31.3.1995. Much emphasis has been laid on Rule 7 of Rules for the conduct of business at a meeting of Mandal Parishad.

7. The facts lie in a very narrow compass. The petitioner is the President of the Mandal Parishad, Nellore (Rural) Mandal, Nellore District. A General Body Meeting was convened on 30.4.2005. An agenda was placed before the General Body Meeting for discussion. The meeting commenced at 2 P.M. and lasted up to 5 P.M. While discussions were going on item No.14(4), according to the petitioner, some members expressed dissent and demanded for voting and thereby pandemonium took place and consequently meeting came to be closed.

8. It is the contention of 3rd respondent that as per the wishes of the members of the General Body Meeting, he as the Vice President presided over the meeting and continued the proceedings. His further contention is that the petitioner has efficacious alternative remedy by way of review under section 264 of A.P. Panchayat Raj Act, 1994 and therefore the writ petition is not maintainable.

9. Before dwelling on the rival contentions of the parties, I may refer Sec.165 and 167 of A.P.Panchayat Raj Act, 1994. Sec.165 refers to the powers and functions of the President and Vice President. The role of Vice President comes into operation when the office of the President is vacant or the President has been continuously absent from the Mandal for more than 15 days or he is incapacitated for more than 15 days. Rule 165(3), 165(4) an 165(5) needs to be noted and it is thus:

> " 165(3) The Vice-President shall exercise such powers and perform such functions of the President as the President may, from time to time, delegate to him in writing.
>
> 165(4) When the office of the President is vacant the Vice-president of the Mandal Parishad shall exercise the powers and perform the functions of the President until a new President is elected.
>
> 165(5) If the President has been continuously absent from the Mandal for more than fifteen days or is incapacitated for more than fifteen days, his powers and functions during such absence or incapacity shall devolve on the Vice-president."

Under Rule 167 (2), the Mandal Parishad Development Officer shall, with the approval of, or on the direction of the President, convene the meetings of the Mandal Parishad so that atleast one meeting of the Mandal Parishad is held every month and if the Mandal Parishad Development Officer fails to discharge that duty, with the result that no meeting of the Mandal Parishad is held within a period of ninety days from the last meeting, he shall be liable to disciplinary action under the relevant rules: The purpose of referring Rule 167(2) is to show that it is the Mandal Parishad Development Officer who has to convene the meeting with the approval of the President. Rightly so in the present case the Mandal Parishad Development Officer has convened the General Body Meeting on 30.4.2005. It is not in dispute that the meeting was presided over by the petitioner and agenda of the meeting comprised 16 items and discussions went on upto 13 items, and when item No.14 came up for discussion, according to the petitioner, there was no consensus among the members and thereby pandemonium prevailed in the meeting which compelled him to close the proceedings. According to 3rd respondent, majority members requested him to preside over the meeting and accordingly he continued the proceedings and took up left over agenda items for discussion and resolutions came to be passed. There is a serious dispute between the parties i.e. whether the petitioner closed the meeting or adjourn the meeting. It is contended by counsel appearing for the 3rd respondent that the meeting having commenced for discussion on agenda items cannot be postponed under Sec.7(2) of the Rules for conduct of the business at a meeting of Mandal Parishad. I deem it appropriate to refer Rules 7, 8 and 9 and it is thus:

" 7. (1) No special meeting shall be held unless at least seven clear days notice specifying the purpose for which such meeting is to be held and the place, the ate and time thereof has been given by separate communication addressed to each member.

7(2) A properly convened meeting of a Mandal Parishad or Zilla Pa;rishad shall not be postponed to a later date except on a written request signed by not less than one half of the total number of members than on the Mandal Parishad or Zilla Parishad.

8. Every meeting shall be presided over by the President/Chairman and in his absence by the Vice-president, vice-Chairman and in the absence of both the President and the vice President the Chairman and the Vice Chairman, by a member chosen by the members present at the meeting.

9. Whenever the President/Chairman finds it necessary to temporarily leave the chair, he may call on the Vice-president/ vice Chairman or in the latter's absence some other member to preside."

10. It is strenuously contended by counsel appearing for 3rd respondent that since the President left the chair, the members of the General Body requested the Vice President (3rd respondent) to preside over the meeting and continue the proceedings and therefore the proceedings are in accordance with the business Rules. The principal issue required to be adjudicated upon is whether the petitioner closed the meeting at 5 P.M. on 30.4.2005 or adjourned the meeting. To adjudicate upon the issue, enquiry is required to be made on basic facts and such enquiry is not within the scope of the writ jurisdiction. Under section 264 of the A.P. Panchayat Raj Act, review application can be filed by the aggrieved party within 90 days of passing of the order. I deem it appropriate to refer Sec.264 of A.P.Panchayat Raj Act, which reads as under:

" 264. Power of Review and Revision by Government: (1) The Government may, either suo motu or on application from any person interested, call for and examine the record of a Gram Panchayat, Mandal Parishad or a Zilla Parishad or of its Standing Committees or of any authority, officer or person, in respect of any proceeding to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any such decision or orders passed therein and, if in any case, it appears to the Government that

any such decision or order should be modified, annulled or reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that the government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.

2. The Government may stay the execution of any such decision or order pending exercise of their powers under sub-section (1) in respect thereof.

3. The Government may suo motu at any time or on an application received from any person interested within ninety days of the passing of an order under sub-section 91), review any such order if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact. The provisions contained in the proviso to sub-section (1) and in sub-section (2) shall apply in respect of any proceeding under this sub-section as they apply to a proceeding under sub-section (1).

4. Every application preferred under sub-section (1) shall be accompanied by a fee of fifteen rupees."

It is explicit from the above-referred provisions of Sec.264 that an aggrieved party can move an application for review before the Government. In that view of the matter, I deem it appropriate to dispose of the writ petition giving liberty to the petitioner to move an application before the Government under section 264(3) of the Panchayat Raj Act, within a month from the date of this order and thereupon the Government shall dispose of the application within two months. Till filing of an application under section 264 of the A.P.Panchayat Raj Act, 1964 before the Government, the interim order passed in WPMP.No.14523 of 2005 shall continue. No costs.

Dated: 29-08-2005. ( B.Seshasayana Reddy, J )

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**THE HONOURABLE SRI JUSTICE**

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**Dated: 29-08-2005.**